

STATEMENT OF PURPOSE

RS21689

This legislation seeks to resolve ethical conflicts that arise under 16-1614, Idaho Code, which allow an attorney to be appointed to serve in a dual capacity as both a guardian ad litem ("GAL") and an attorney for a child. An attorney serving in this dual role may be required to act in violation of the Rules of Professional Conduct for attorneys. A GAL advocates for the best interests of the child whereas an attorney advocates for what the child wants and maintains a confidential attorney-client relationship with the child. Most GALs are non-lawyer CASA volunteers. The proposed bill clarifies that an attorney may be appointed as an attorney for a child or a GAL for the child but may not serve in both roles in the same case. An attorney appointed as a GAL has the same rights and responsibilities as a non-lawyer GAL and has no additional authority even though that individual may hold a license to practice law.

The proposed bill further amends the statute to require a specific type of representation for a child involved in a child protection action. The bill requires the appointment of a GAL for all children under the age of twelve (12) unless there is no GAL available in which case an attorney shall be appointed to represent the child. An attorney shall be appointed to represent the GAL. For children twelve (12) years of age or older, the legislation requires the appointment of counsel to represent the child absent a finding by the court that such appointment is not appropriate or practicable. The appointment of counsel allows older children to have representation and a voice in critical decisions being made about their lives.

FISCAL NOTE

There is no anticipated increase to the general fund. The impact on counties cannot be precisely calculated. Because the current statute does not provide uniform standards for representation of children and guardian ad litem in child protection cases, the net impact of uniform representation cannot be predicted.

Contact:

Brent Reinke
Idaho Criminal Justice Commission
(208) 658-2115